

REMARKS

This is in response to the Office Action mailed on January 13, 2009. With this response, applicant has canceled claims 1-22 and added claims 23-33 which are believe to overcome the objections and rejections outlined in the Office Action.

New claim 23 has a basis in paragraphs [0012], [0013], [0017], [0024], [0027] and [0023] of the description and has been limited to the embodiment of excluding an additional treatment such as a coating step, disclosed in paragraph [0026], by the feature that the product of step a) is added to the drink, which is also supported by the working examples. Therefore, no new matter is added with new claim 23. New claim 23 recites all method steps required for flavoring a drink and thereby overcomes the rejection under 35 U.S.C. § 112.

The Lou et al. reference (US 6,368,633) discloses microparticles prepared in a three step sequence of (1) adsorption of an olfactory active material onto silica followed by (2) a blending/extrusion step followed by (3) at least one particularization step (abstract). The product from step (1) has to be mixed with a molten saccharide composition consisting essentially of a mixture of maltose and mannitol for the blending/extrusion step (claim 1; column 3, lines 16 to 67). Lou et al. further discloses in column 4, lines 1 to 11 that the microparticles resulting from step (3) are useful in imparting aroma and/or taste over relatively long periods of time to beverages. However, Lou et al. does not disclose to add a flavor component-bearing silica powder composition resulting from step (1) to a beverage. Therefore, Lou et al. does not anticipate the subject matter of new claim 23.

A person skilled in the art is well aware of the technique of delaying the release of a flavor from a composition by encapsulating the flavor substance, see Lou et al. column 1, lines 37 to 41. In the particles of Lou et al. the flavor component-bearing silica powder is encapsulated in the solidified saccharide composition. Therefore, a person skilled in the art will recognize steps (2) and (3) of the process of Lou et al. as necessary for achieving the encapsulation that provides a delayed long lasting release of the flavor substance. As a consequence, a person skilled in the art aiming to provide a long lasting release of the flavor substance would not consider to omit steps (2) and (3) from the process of Lou et al. and would not consider to add the product from step

(1) of the Lou et al. process to a beverage, since he would not expect such product to be successful for providing a long lasting release of a flavor based on his general knowledge and the teachings of Lou et al. Therefore, the method of claim 23 is not obvious from Lou et al.

The examiner has indicated that both JP 04 341 165 and DD 268 150 do not disclose loading carrier material with flavoring agents from a liquid which contains flavoring agents. Therefore, both documents cannot anticipate the subject matter of new claim 23.

Respectfully submitted,

/John L. Alex/

John L. Alex
Registration No. 22017

Cook, Alex, McFarron, Manzo,
Cummings & Mehler, Ltd.
200 West Adams Street
Suite 2850
Chicago, Illinois 60606
312.236.8500